LICENSING ACT 2003

FRIVOLOUS AND VEXATIOUS REPRESENTATIONS

FRIVOLOUS, VEXATIOUS AND REPEATED REQUESTS FOR REVIEW

Frivolous, Vexatious and Repetitious Requests

The Licensing Act 2003 provides that where the Licensing Authority receives representations in respect of an application, then it must normally arrange a hearing unless the Authority considers those representations or requests to be **frivolous or vexatious**.

There are similar provisions relating to requests for review of a premises licence or club registration certificate. In addition the Licensing Authority can reject requests for review if they consider them to be a **repetition**.

This document is intended to assist in determining whether a representation or request is frivolous or vexatious or a repetition.

INTRODUCTION

What is the Council's general approach?

The Council is confident that most members of the public will exercise their rights to make representations and requests sensibly and responsibly. However, it is recognised that there is a risk that some individuals - and perhaps some organisations - may seek to abuse these rights with requests which are manifestly unreasonable and which would impose substantial burdens on applicants, licence holders and the licensing authority. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against the applicant, licence holder or the authority.

The Council considers that the exception in the Act for frivolous and vexatious and repeated representations and requests is important in order to prevent the licensing function being used to pursue non licensing issues and to ensure that unjustified expenditure is not incurred or unnecessary burdens imposed as a result of or in dealing with such representations/requests.

The Council does however emphasise that it will not conclude that a representation or request is frivolous, vexatious or repeated unless there are sound grounds for such a decision, and interested parties will be notified of the grounds for any such decision.

Frivolous or Vexatious Representations or Requests

What does the Act say?

Attached as an Appendix to this note is a list of sections in the Act which deal with these issues in respect of a series of licence types.

Interested parties and responsible authorities (defined in the Act) are able to make representations in respect of licence applications and the licensing authority must normally hold a hearing provided:

- The representations were made by the required date
- They have not been withdrawn
- **In the case of representations made by an interested party (who is not also a responsible authority) that they are not, in the opinion of the licensing authority, frivolous or vexatious**

Interested parties and responsible authorities are also able to make requests for review of premises licences and club registration certificates already in force, and the licensing authority must normally hold a hearing unless it rejects the request because it is satisfied that

- The grounds for review were not relevant to the licensing objectives set out in the Act
- **In the case of representations made by an interested party (who is not also a responsible authority) that the ground is frivolous or vexatious or a repetition**

What is a frivolous or vexatious request?

There is no definition of "frivolous" or "vexatious" in the Act.

Dictionary definitions of frivolous refer to "trifling; not serious" and this will be taken to mean that a representation or request for review will fall into this category if the issues complained of are of a very minor nature and would not warrant any action at all or any action required would be disproportionate.

Dictionary definitions of vexatious refer to “causing annoyance or worry”.

In the different context of litigation, vexatious has been considered by the courts in cases where public authorities and others have sought to have particular individuals declared “vexatious litigants.” The case of the Attorney General v Barker (2000), for instance, suggests that it may be reasonable to treat as vexatious a request which is **designed** to subject a public authority to inconvenience, harassment or expense.

But – although a request cannot be treated as vexatious simply because it causes inconvenience or expense - the Council considers that a wider approach is necessary in the context of the Act. **Effect** will need to be considered as well as intention. Even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, then it will be appropriate to treat the request as being vexatious.

How is it possible to identify a single request as vexatious?

There are a number of ways in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:

• **The interested party makes clear his or her intention**
If an applicant explicitly states that it is his or her intention to cause an applicant, licence holder or the licensing authority the maximum inconvenience through a request, it will almost certainly make that request vexatious.

• **The authority has independent knowledge of the intention of the interested party**
Similarly, if an applicant (or an organisation to which the applicant belongs, such as a campaign group) has previously indicated an intention to cause an applicant, licence holder or the licensing authority the maximum inconvenience through making representations or requests, it will usually be possible to regard that representation or request as being vexatious.

• **The representation or request clearly does not have any serious purpose**
Although the Act does not require the person making a representation or request to disclose any reason for doing so beyond the requirement to relate to the licensing objectives, there may be cases which are so lacking in serious purpose that they can only be fairly treated as “vexatious”.

• **The representation or request can fairly be characterised as obsessive or manifestly unreasonable**
It will usually be easier to recognise such cases than define them. They will be exceptional – public authorities must not be judgemental without good cause. An apparently tedious representation or request, which in fact relates to a genuine concern, will not be dismissed.

However, the Council will need to identify representations or requests which a reasonable person would describe as obsessive or manifestly unreasonable. They will obviously be easier to identify when there has been frequent prior contact with the submitter or there is a pattern of representations or requests. Although they may not be “repeated” in the sense that they are requests about the same matters, taken together they may form evidence of a pattern of obsessive representations/requests so that the Council may reasonably regard the most recent as vexatious.

To what extent can the Council take into account any knowledge it has of the applicant?

A representation/request cannot be judged vexatious purely on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated, requests. The same applies where that person has been judged vexatious by the Council in areas unconnected to Licensing matters.

The Council may have taken the decision not to correspond with a person in respect of their complaints to the organisation, but they cannot simply adopt this stance with regard to that person's representations/requests.

However, it may be reasonable for the authority to conclude that a particular representation/request represents a continuation of behaviour which it has judged to be vexatious in another context and therefore to refuse the request as being vexatious,

Can the Council take account of abusive or threatening language?

A representation or request which either contains abusive or offensive language or is written in a threatening tone, although unpleasant, will not automatically render it vexatious. The use of threatening, offensive or abusive language or behaviour may however be strongly indicative of a vexatious request.

Are representations/requests submitted under obvious pseudonyms automatically vexatious?

Representations and requests for review must be in writing and the interested party must state his or her name and an address for correspondence. Technically, therefore a representation/request submitted using a pseudonym is not a proper request and could be refused on that ground. However, the time limits imposed on the Council for dealing with applications will permit very little time for any enquiries into the circumstances of the applicant or to ask for information in order to verify identities.

Unless the Council **knows** that the applicant has used a pseudonym, therefore, it will be difficult to refuse a request on that ground.

What is a repetition?

The Act states that a ground for review is a repetition if –

(a) it is identical or substantially similar to -

- (i) a ground for review specified in an earlier application for review made in respect of the same premises licence… or
- (ii) representations considered previously by the licensing authority before it determined the licence application
- (iii) representations which would have been considered except for the exclusion provisions relating to provisional statements, and

(b) a reasonable interval has not elapsed since the earlier application for review or the grant of the licence.

What is a “reasonable interval”?

The term “a reasonable interval” is not defined in the Act. Much will depend on when the previous request was dealt with and the outcome, for example was the licence holder given a time to comply with conditions.

Can requests be both repeated and vexatious?

Yesbut this may often be a difficult judgement to make. Such a judgement may become easier however, if there is a succession of requests, whether or not strictly “identical or substantially similar”.

Can an authority refuse identical requests submitted by different applicants on the ground that they are repetitious?

Yes. The Act deals with the content of the request not the submitter. Furthermore the requests do not have to be identical, they can be refused if they are substantially similar.

Who should make the decision as to whether a request is vexatious?

This is set out in the Scheme of Delegation.

What approach should be adopted where it is uncertain that a request is vexatious?

In certain cases it may be difficult to determine whether a request is frivolous or vexatious. In such cases it may be appropriate to accept the representation or request and proceed to a hearing.

What happens if a representation/request is judged to be frivolous, vexatious or a repetition?

The Act requires the Council to notify the interested party of the reasons for its decision if it does decide that a representation is frivolous, vexatious or a repetition.

Appendix

Frivolous/Vexatious

Section	Subject
18 (7), (8)	Determination of application for premises Licence
31 (6), (7)	Determination of application for provisional statement
35 (6)	Determination of application under section 34
36 (5)	Supplementary provision about determination under section 35
51 (4), (6)	Application for review of premises licence
52 (8), (9)	Determination of application for review
72 (8), (9)	Determination of application for club premises certificate
85 (6)	Determination of application under section 84
86 (5)	Supplementary provision about application under section 84
87 (4), (6)	Application for review of club premises certificate
88 (8), (9)	Determination of applications for review
167 (10), (11)	Review of premises licence following closure order

Repetition

51 (4), (5)	Application for review of premises licence
87 (4), (5)	Application to review club premises certificate